IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 767.

JULIUS HYMAN, *Petitioner,*

v.

VELSICOL CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of Illinois.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT IN OPPOSITION.

Respondent in its argument in opposition to Petition for Certiorari misconceives the case as we view it. Its argument is based on the proposition that no federal question is presented. But by implication Respondent concedes a fact which is obvious from the record: that the Supreme Court of Illinois found and held that Petitioner had not invented the insecticide on which he made application for the patents which are in issue here.

The actual finding of the Court is as follows:

> "We believe the record fairly establishes that a number of chemists employed by appellant, including appellee, had part in discovering or inventing the component parts of 1068 and other insecticides

> through laboratory tests and experiments conducted by appellant, and that 1068 cannot be said to result exclusively through the brain of appellee." (R. 294)

Respondent attempts to avoid the effect of that finding by saying that it was not material to the decision and further, that the Supreme Court of Illinois had no jurisdiction to make it.

It cannot be said that the finding was not material for the following reasons: The lower court had decreed the assignment of the patent applications to Respondent, treating them as valid. The Supreme Court of Illinois trespassed on federal jurisdiction by a positive finding of lack of invention based on a review of all the evidence. It might be argued that this in itself did not raise a federal question had the Supreme Court of Illinois remanded the case to the lower court to change its decree with respect to the assignment of the patent. This, however, the Supreme Court of Illinois did not do. It affirmed the decree requiring the assignment of the patent applications in the face of its own finding that the applicant was not the inventor. This is an affirmative act on the part of the Supreme Court of Illinois which enables the Respondent to perpetrate a fraud against federal law and the public. Respondent by the decree of the Supreme Court of Illinois is now protected from effective competition by an assignment of patent applications ordered by the Supreme Court of Illinois in spite of a finding of fact that there was no invention.

The patents in question are tremendously important. They affect a large section of the nation's agricultural economy. The Supreme Court of Illinois has reviewed the evidence. Its finding is that there are no patent rights here which can be lawfully assigned. By its mandate it puts Respondent in a position to obtain a monopoly in violation of the patent laws at least for a substantial period of time by insulating Respondent from lawful competition.

On the face of the finding of the court Petitioner's process is now in the public domain. No one can now perfect

another patent application on it. The question is therefore presented whether a state court, knowing that a patent or a patent application is void may, nevertheless, enter a decree which gives the manufacturer of the article federal patent protection.

In the light of the decree compelling the assignment of the patent applications which the Supreme Court of Illinois has affirmed, we insist that the finding of no invention cannot be treated as a mere dictum which does not raise a federal question. This is not a case of a decree which merely assigns an invalid property right which affects only the parties to the action. The decree here is contrary to the public interest which the patent laws seek to serve. It affects competition throughout the insecticide field. It extends the protection of the patent laws by affirmative judicial order to areas which they were not intended to cover.

For these reasons we believe that this Honorable Court should grant the Petition.

Respectfully submitted,

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